

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1032

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

CLIFFORD ZIEGLER,
Defendant-Appellant.

On Appeal from the United States District
Court for the Eastern District of New York

APPENDIX

WILLIAM J. STUTMAN
Attorney for Defendant-
Appellant
233 Spring Street
New York, N. Y. 10013
255-5170

DAVID G. TRAGER
UNITED STATES ATTORNEY
For The Eastern District
Of New York
Attorney For Appellee
225 Cadman Plaza East
Brooklyn, New York 11201

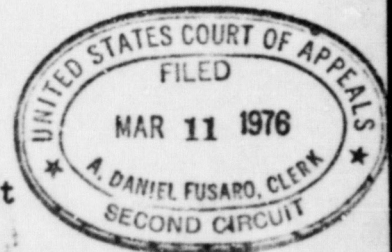


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76-1032

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

E.D.N.Y.
74 CR. 467

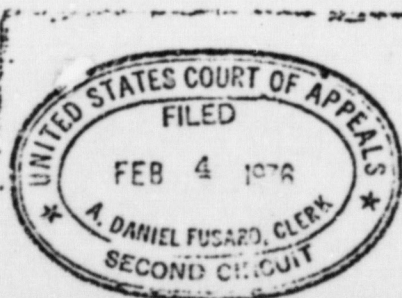
-against-

PLATT, J.

CLIFFORD ZEIGLER.

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76-1032

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

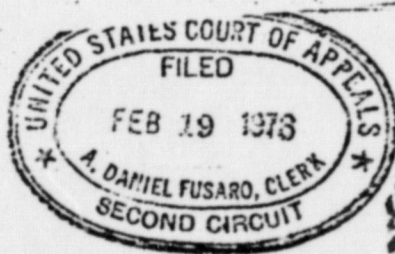
UNITED STATES OF AMERICA

-against-
CLIFFORD ZEIGLER

E. D. N. Y.
74 CR. 467
Platt, J.

SUPPLEMENTAL INDEX TO RECORD ON APPEAL

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TITLE OF CASE

ATTORNEYS

THE UNITED STATES

CLOSED

For U. S.: Corcoran

Peter-Passalacqua-32-Court

St--Brooklyn, N.Y.-11201

852-2634-

CLIFFORD ZEIGLER

For Defendant: ~~XXXXXXXXXX~~

Legal Aid- 26 Court Street

Brooklyn, N.Y.-

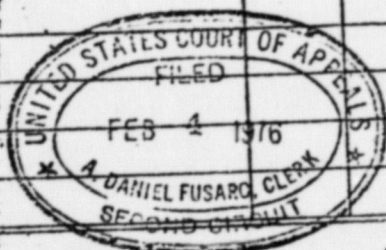
Hesper Jackson Jr.

860 Fulton St., Bklyn, NY.

NE 8-5917

Did possess heroin

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		1-13-76	Notice of Appeal		
Clerk,			(no fee)		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					



DATE	PROCEEDINGS
7-2-74	Before PLATT, J.- Indictment filed
7/12/74	Before Platt, J.-Case called-Bench warrant ordered-Execution of same stay to 7/16/74 at 10:00 AM
7-16-74	Before Platt - Bench Warrant ordered.
7-18-74	Bench warrant issued
11-1-74	Before DOOLING J - case called - deft produced in court on a Bench Warrant - deft to appear on Nov. 4, 1974 before Judge Platt at 9:30 am. Bail continued.
11-4-74	Before PLATT, J - case called - deft & counsel M. Selzer present- Deft arraigned and enters a plea of not guilty - deft C.R. bail contd- Set down for trial Nov. 18, 1974.
11/7/74	Notice of readiness for trial filed

DATE	PROCEEDINGS
-18-74	Before PLATT, J - case called - deft present with counsel M. Seltzer of Legal Aid - adjd to Nov. 26, 1974 at 9:30 am fo set a date for trial.
1/26/74	Before PLATT, J.- Case called- Deft and counsel present- Adjd to 1/3/75 at A.M.
1/3/75	Before PLATT, J.- Case called- Adjd to 2/28/75
2/18/75	Magistrate's file 74 M 165 inserted into CR file.
2-24-75	Before PLATT, J - case called - deft & counsel present - adjd to 2-25-75 at 2:00 PM.
2/25/75	Before PLATT, J.- Case called- Deft and counsel ^{Legal Aid} present- Case ready and holding pending assignment of counsel
4/11/75	By PLATT, J.- Order appointing counsel filed (ZEIGLER)
4-11-75	Before PLATT, J - case called - adjd to 4-21-75 at 9:30 am.
2/2/75	Before PLATT, J.- Case called- deft and counsel present- case adjd to 12/8 at 9:30 A.M.
12-8-75	Before PLATT, J - case called - deft & atty Hesper Jackson present - Trial ordered and begun - Trial contd to 12-9-75
12-9-75	Before PLATT, J - case called - deft & counsel H. Jackson present - trial contd - defts motion to dismiss denied - defts motion for a mistrial denied - Jury retires to deliberate - Jury returns with a verdict of guilty as to counts 1 and 2 - jury polled and discharged - defts motion to set aside the verdict is denied - bail set at \$10,000 PRB - sentence adjd without date - trial concluded.
12-9-75	Notice of Appearance filed.
12/31/75	Voucher for compensation of counsel filed
1-8-76	Stenographers transcript dated Dec. 8, 1975 filed
1-9-76	Before PLATT, J - case called - deft & counsel Hesper Jackson present - Deft is sentenced on count one to imprisonment of 8 yrs plus special parole term of 6 years; and on count 2 to a term of imprisonment of 8 years plus special parole term of 6 years; pursuant to 18:4208 sentence under count 2 to run concurrently with sentence in count 1.
1-9-76	Judgment and Commitment filed - certified copies to Marshal.
1-13-76	Notice of Appeal filed (no fee)
1-13-76	Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.
1/30/76	Copy of order received from court of appeals that record be docketed on before 2/9/76
2-4-76	Record on Appeal certified and handed to J. Gil for delivery to the Court of Appeals.

74 CR 467
CRIMINAL DOCKET

DATE	PROCEEDINGS
2-6-76	Acknowledgment received from the Court of Appeals for Record on Appeal filed.
2-17-76	Two stenographers transcript filed (one dated Dec. 9 , 1975 and one dated Jan. 8th 1976)

2/18/76
INDEXED
BY Lee Hall

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

-against-

CLIFFORD ZEIGLER,

Defendant.
----- x

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 5th day of October, 1973, within the Eastern District of New York, the defendant CLIFFORD ZEIGLER, did knowingly and intentionally possess with intent to distribute, approximately 47.17 grams of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

COUNT TWO

On or about the 5th day of October, 1973, within the Eastern District of New York, the defendant CLIFFORD ZEIGLER, did knowingly and intentionally distribute approximately 47.17 grams of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1); Title 18, United States Code, §2).

A TRUE BILL.

Anthony A. Trano

David G. Trager

DAVID G. TRAGER
United States Attorney
Eastern District of New York

74CR 467

INDICTMENT

Cr. No.

(T. 21, U.S.C., §841(a)(1);

T. 18, U.S.C., §2)

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 2 1974 ★

TIME A.M.

P.M.

A F T E R N O O N S E S S I O N

(Time noted: 2:05 p.m.)

THE COURT: Bring in the jury.

(Jury enters jury box.)

THE COURT: We have to wait just one moment, ladies and gentlemen. I'll give him one more moment. If he doesn't arrive shortly, we will proceed.

(Mr. Corcoran and Mr. Jackson not present.)

THE COURT: Mr. Passalacqua, do you have any objection to proceeding without the government being present.

MR. PASSALACQUA: I have no objection.

THE COURT: We will proceed. Ladies and gentlemen, I do make it a practice of reading my charge to you rather than giving it to you extemporaneously, for two reasons. One, I think while it's harder for you to listen to than to hear an extemporaneous charge, it's much more accurate if it is read. Secondly, it minimizes the risk of error and the possibility of having to retry the case.

So, I ask you to bear with me and listen to the charge carefully. It requires a little bit more attention on your part. But I am sure you are capable of doing that.

Now that you have heard the evidence and the

1
2 argument, it becomes my duty to give the instructions
3 of the Court as to the law applicable to this case.

4 It is your duty as jurors to follow the law as
5 stated in the instructions of the Court, and to apply
6 the rules of law so given to the facts as you find them
7 from the evidence in the case.

8 You are not to single out one instruction alone
9 as stating the law, but must consider the instructions
10 as a whole.

11 Neither are you to be concerned with the wisdom
12 of any rule of law stated by the Court. Regardless of
13 any opinion you may have as to what the law ought to
14 be, it would be a violation of your sworn duty to base
15 a verdict upon any other view of the law than that
16 given in the instruction of the Court; just as it
17 would be a violation of your sworn duty, as judges of
18 the facts, to base a verdict upon anything but the
19 evidence in the case.

20 You must not permit yourselves to be governed
21 by sympathy, bias, prejudice or any other considerations
22 not founded on evidence and these instructions on the
23 law.

24 Justice through trial by jury must always
25 depend upon the willingness of each individual juror

1
2 to seek the truth as to the facts from the same
3 evidence presented to all the jurors; and to arrive at
4 a verdict by applying the same rules of law as given
5 in the instructions of the Court.

6 You have been chosen and sworn as jurors in this
7 case to try the issues of fact presented by the
8 allegations of the indictment and the denial made by
9 the "Not guilty" plea of the accused.

10 You are to perform this duty without bias or
11 prejudice as to any party. The law does not permit
12 jurors to be governed by sympathy, prejudice or public
13 opinion. Both the accused and the public expect that
14 you will carefully and impartially consider all the
15 evidence in the case, follow the law as stated by the
16 Court and reach a just verdict, regardless of the
17 consequences.

18 I am not sending the exhibits which have been
19 received in evidence with you as you retire for your
20 deliberations. You are entitled, however, to see any
21 or all of the exhibits as you consider your verdict.
22 I suggest that you begin your deliberations and then,
23 if it would be helpful to you, you may ask for any or
24 all of the exhibits simply by sending a note to me
25 through one of the marshals who will be stationed

1
2 outside your door.

3 Now an indictment is but a form or method of
4 accusing a defendant of a crime. It is not evidence of
5 any kind against the accused.

6 There are two types of evidence from which a
7 jury may properly find a defendant guilty of a crime.
8 One is direct evidence, such as the testimony of an
9 eye witness. The other is circumstantial evidence,
10 the proof of facts and circumstances which rationally
11 imply the existence or non-existence of other facts
12 because such other facts usually follow according to
13 the common experience of mankind.

14 (Continued next page.)
15
16
17
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25

rs/ss
T5

1 THE COURT: (Continuing.) By way of example,
2 the footprint of a man in the sand implied to Robinson
3 Carusoe there was another man with him on the desert
4 island and indeed there was, the man Friday. Thus on
5 the one hand you may have direct evidence of the issue
6 and on the other hand you may have circumstantial
7 evidence of the issue. The law does not hold that one
8 type of evidence is necessarily of better quality than
9 the other. The law requires only that the government
10 prove its case beyond a reasonable doubt both on the
11 direct and circumstantial evidence. At times the jury
12 might feel that circumstantial evidence is of better
13 quality. At other times they may feel direct
14 evidence is of better quality. That judgment is left
15 entirely up to you.
16

17 As a general rule, the law makes no distinction
18 between direct and circumstantial evidence, but simply
19 requires that, before convicting a defendant, the jury
20 be satisfied of the defendant's guilt beyond a
21 reasonable doubt from all the evidence in the case.

22 The law presumes the defendant to be innocent
23 of crime. Thus a defendant, although accused, begins
24 the trial with a clean slate, with no evidence against
25 him. And the law permits nothing but legal evidence

1 presented before the jury to be considered in support
2 of any charge against the accused. So the presumption
3 of innocence alone is sufficient to acquit a defendant
4 until the jurors are satisfied beyond a reasonable
5 doubt of the defendant's guilt after careful and
6 impartial consideration of all the evidence in the case.
7

8 The burden is always upon the prosecution to
9 prove guilt beyond a reasonable doubt. This burden
10 never shifts to a defendant; for the law never imposes
11 upon a defendant in a criminal case the burden or duty
12 of calling any witnesses or producing any evidence.

13 A reasonable doubt does not mean a doubt
14 arbitrarily and capriciously asserted by a juror
15 because of his or her reluctance to perform an
16 unpleasant task. It does not mean a doubt arising
17 from the natural sympathy which we all have for others.
18 It is not necessary for the government to prove the
19 guilt of the defendant beyond all possible doubt.
20 Because if that were the rule, very few people would
21 ever be convicted. It is practically impossible for
22 a person to be absolutely sure and convinced of any
23 controverted facts which, by its nature, is not
24 susceptible of mathematical certainty. In consequence,
25 the law says that a doubt should be a reasonable doubt.

1
2 not a possible doubt.

3 A reasonable doubt is a doubt based upon
4 reason and common sense, the kind of doubt that would
5 make a reasonable person hesitate to act. Proof
6 beyond a reasonable doubt must therefore be proof of
7 such a convincing character that you would be willing
8 to rely and act upon it unhesitatingly in the most
9 important of your affairs.

10 The jury will remember that the defendant is not
11 to be convicted on mere suspicion or conjecture.

12 Again, a reasonable doubt means a doubt that is
13 based on reason and must be substantial rather than
14 speculative. It should be sufficient to make a
15 prudent person hesitate to act in the most important
16 of his or her life.

17 The requirement of proof beyond a reasonable
18 doubt operates on the whole case and not on the
19 separate bits of evidence. Each individual item of
20 evidence need not be proven beyond a reasonable doubt.

21 Now it is charged in Count One of the
22 indictment that on or about the 5th day of October,
23 1973, within the Eastern District of New York, the
24 defendant Clifford Zeigler knowingly and intentionally
25 possessed with intent to distribute approximately

1
2 47.17 grams of heroin hydrochloride, a Schedule I
3 narcotic controlled substance in violation of Title
4 21, United States Code, Section 841 and in Title 18,
5 United States Code, Section 2.

6 The statutes alleged to have been violated in
7 both Counts One and Two of the indictment, in this case
8 they are designated as Section 841 (a) (1) of Title 21
9 and Section 2 of Title 18. The first of these sections
10 provides in pertinent part: "It shall be unlawful for
11 any person knowingly or intentionally to distribute or
12 possess with intent to distribute, a controlled
13 substance." Schedule I includes heroin.

14 Both counts of the indictment charge a
15 violation of the so-called aiding and abetting section,
16 Title 18, United States Code Subsection 2, which
17 provides that:

18 "Whoever commits an offense against the
19 United States or aids, abets, counsels, commands,
20 induces or procures its commission, is punishable as
21 a principal."

22 And, "Whoever willfully causes an act to be done
23 which if directly performed by him or another would be
24 an offense against the United States, is punishable as
25 a principal."

1
2 Now the essential elements of the charge in
3 Count One, which must be proven beyond a reasonable
4 doubt are:

5 One, the act of possessing heroin as alleged;

6 Two, that the defendant knowingly and
7 intentionally possessed the same; and

8 Three, that the defendant possessed the same
9 with intent to distribute it as alleged

10 It is charged in Count Two of the indictment,
11 "That on or about the 5th day of October, 1973, within
12 the Eastern District of New York, the defendant
13 Clifford Zeigler did knowingly and intentionally
14 distribute approximately 47.17 grams of heroin
15 hydrochloride, a Schedule I narcotic, in violation
16 of..." the same two sections which I just read to you.

17 The essential elements of the crime charged which
18 must be proven beyond a reasonable doubt are: The act
19 of distributing heroin as alleged; that any such
20 distribution by the defendant was done knowingly and
21 intentionally.

22 Now on the question of possession. The law
23 recognizes two kinds of possession. Actual possession
24 and constructive possession. A person who knowingly
25 has direct physical control over a thing, at a given

time, is then in actual possession of it.

A person who, although not in actual possession knowingly has both power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If a person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find the element of possession as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with others.

An act or failure to act is knowingly done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Now as I indicated to you, I read to you a moment ago and I read Section 2 of Title 18 of the United States Code provides that, "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induce, or procures its

1
2 commission, is punishable as a principal. Whoever
3 willfully causes an act to be done, which if directly
4 performed by him or another would be an offense
5 against the United States, is punishable as a
6 principal."

7 The guilt of a defendant may be established
8 without proof that the accused personally did every
9 act constituting the offense charged.

10 In other words, every person who willfully
11 participates in the commission of a crime may be found
12 guilty of that offense. Participation is willful if
13 done voluntarily and intentionally, and with a
14 specific intent to do something the law forbids or with
15 a specific intent to fail to do something the law
16 requires to be done: That is to say, with bad purpose
17 either to disobey or to disregard the law.

18 In order to aid and abet another to commit a
19 crime it is necessary that the accused willfully
20 associate himself in some way with the criminal
21 venture, and willfully participate in it as he would
22 in something he wishes to bring about; that is to say,
23 that he willfully seek by some act or omission of his
24 to make the criminal venture succeed.

25 An act or omission is willfully done if done

1
2 voluntarily and intentionally and with the specific
3 intent to do something the law forbids or with the
4 specific intent to fail to do something the law
5 requires to be done; that is to say, with bad purpose
6 either to disobey or to disregard the law.

7 You of course may not find any defendant guilty
8 unless you find beyond a reasonable doubt that every
9 element of the offense as defined in these instructions
10 was committed by some person or persons and that the
11 defendant participated in its commission.

12 Mere presence at the scene of the crime and
13 knowledge that a crime is being committed are not
14 sufficient to establish that the defendant aided and
15 abetted the crime, unless you find beyond a reasonable
16 doubt that the defendant was a participant and not
17 merely a knowing spectator.

18 The weight of the evidence is not necessarily
19 determined by the number of witnesses testifying on
20 either side. You should consider all the facts and
21 circumstances in evidence to determine which of the
22 witnesses are worthy of greater credence. I will give
23 you more instructions on that question in a moment.

24 An act is done knowingly if done voluntarily
25 and intentionally and not because of mistake or

1
2 accident or other innocent reason.

3 The purpose in adding the word knowingly was to
4 insure that no one would be convicted for an act done
5 because of mistake or accident or other innocent
6 reason.

7 As stated before, with respect to an offense
8 such as charged in this case, specific intent must be
9 proved beyond a reasonable doubt before there can be
10 a conviction.

11 An act is done willfully if done voluntarily
12 and intentionally, and with the specific intent to do
13 something the law forbids: That is to say with bad
14 purpose either to disobey or disregard the law.

15 Now knowledge and intent ordinarily may not be
16 proven directly, because there is no way of fathoming
17 or scrutinizing the operations of the human mind.
18 But you may infer a defendant's knowledge and intent
19 from the surrounding circumstances. You may consider
20 any statement made and done or omitted by a defendant,
21 and all of the facts and circumstances in evidence
22 which indicate his state of mind. It is ordinarily
23 reasonable to infer that a person intends the
24 natural and probable consequences of his acts
25 knowingly done or knowingly omitted.

1
2 Statements or arguments of counsel are not
3 evidence in the case, unless made as an admission or
4 stipulation of fact. When the attorneys for both
5 sides stipulate or agree to the existence of a fact,
6 such as in this case I think they agreed on the fact
7 that the package, Exhibit Number 2, contains 47.17
8 grams of heroin, you must until otherwise instructed
9 accept such stipulation as evidence and regard that
10 fact as proved.

11 The Court may take judicial notice of certain
12 facts or events. I don't believe I did in this case.
13 Unless you are otherwise instructed, the evidence in
14 the case always consists of the sworn testimony of the
15 witnesses, regardless of who may have called them, and
16 all exhibits received in evidence, regardless of who
17 may have produced them and all facts which may have
18 been admitted or stipulated and all applicable
19 presumptions stated in these instructions.

20 Any evidence as to which an objection was
21 sustained by the Court and any evidence ordered
22 stricken by the Court must be entirely disregarded.
23 Evidence does include however what was brought out from
24 a witness on cross-examination as well as what he
25 testified to on direct examination. Unless you were

1
2 otherwise instructed anything you may have seen or
3 heard outside the Courtroom is not evidence and must
4 be entirely disregarded.

5 You are to consider only the evidence in the
6 case and your verdict is to be based upon the evidence
7 only. But, in your consideration of the evidence you
8 are not limited to the bald statements of the witnesses.
9 In other words, you're not limited solely to what you
10 see and hear as the witness testifies. You are
11 permitted to draw from facts which you find has been
12 proven, such reasonable inferences that you feel are
13 justified in the light of your experience. Inferences
14 are deductions or conclusions which reason and common
15 sense lead the jury to draw from the facts which have
16 been shown by the evidence in the case.

17 If a lawyer asks a witness a question which
18 contains an assertion of fact you may not consider
19 the assertion as evidence of that fact. The lawyer's
20 statements are not evidence. Evidence relating to any
21 statement or act or omission claimed to have been made
22 or done by a defendant outside of Court and after a
23 crime has been committed should always be considered
24 with caution and weighed carefully. All such evidence
25 should be disregarded entirely? The evidence in the

1
2 case must convince the jury beyond a reasonable doubt
3 that the statement or act or omission was knowingly
4 made or done. A statement or act or omission is
5 knowingly made or done voluntarily and intentionally
6 and not because of mistake or accident or other
7 innocent reason.

8 In determining whether any statement or act or
9 omission claimed to have been made by defendant outside
10 of Court and after a crime has been committed was
11 knowingly made or done, the jury should consider
12 the age, sex, training, education, occupation,
13 physical and mental condition of the defendant. Also
14 all the circumstances surrounding the making of the
15 statement, of the act or admission.

16 You as jurors are the sole judges of the
17 credibility of witnesses and the weight their
18 testimony is to be given. You should scrutinize all
19 the testimony, given, the circumstances under which
20 each witness has testified and every matter in
21 evidence which tends to show whether the witnesses
22 were worthy of belief. Consider each witness'
23 intelligence, motive and state of mind and the demeanor
24 and manner while on the stand. Consider the witness'
25 ability to observe the matters as to which he has

1 testified and whether he impresses you as having an
2 accurate recollection of these matters.

3 Consider also any relation each witness may
4 bear to either side of the case; the manner in which
5 each witness may be affected by the verdict, if to any
6 extent at all, and if each witness is supported or
7 contradicted by other evidence in the case.

8 Inconsistencies or discrepancies in the
9 testimony of a witness or between the testimony of
10 different witness, may or may not cause a juror to
11 discredit such testimony. If two or more persons
12 observe an incident or transaction, they may see or
13 hear it differently.

14 And innocent failure of recollection is not an
15 uncommon experience. In weighing the effect of a
16 discrepancy, always consider whether it pertains to
17 matters of importance or unimportant details and
18 whether the discrepancy results from innocent error or
19 intentional falsehood.

20 After making your own judgment, you will give
21 the testimony of each witness such credibility, if any,
22 as you may think it deserves.

23 The testimony of a witness may be discredited or
24 impeached by showing that he previously made statements
25

1
2 which are inconsistent with the present testimony...

3 The contradicted testimony or the impeaching of
4 the credibility of a witness does not establish the
5 truth of these statements. It is the province of the
6 jury to determine the credibility, if any, to be
7 given to the testimony of any witness who has been
8 impeached.

9 If a witness has been shown to have knowingly
10 testified falsely concerning any material matter or
11 particular matter, you may reject all the testimony of
12 that witness or give it such credibility as you may
13 think it deserves.

14 The law does not compel a defendant in a
15 criminal case to take the witness stand and testify
16 and no presumption of guilt may be raised and no
17 inference of any kind may be drawn from the failure of
18 a defendant to testify. As stated before, the law
19 never imposes upon a defendant in a criminal case the
20 burden or duty of calling any witness or producing any
21 evidence.

22 It is the duty of the attorney on each side of
23 the case to object when the other side offers testimony
24 or other evidence which the attorney believes is not
25 properly admissible.

1
2 You should not be prejudiced against an
3 attorney or his client because the attorney has made
4 objections. Upon allowing the testimony or other
5 evidence to be introduced over an objection of an
6 attorney, the Court does not, unless expressly stated,
7 indicate any opinion as to the weight or effect of such
8 evidence.

9 As stated before the jurors are the sole judges
10 of the credibility of all witnesses and the weight and
11 effect of all evidence.

12 When the Court has sustained an objection to a
13 question directed to a witness, the jury must disregard
14 the entire question and may draw no inferences from the
15 wording or speculate as to what the witness would have
16 said if he were permitted to answer the question.

17 The fact that the Court has asked one or more
18 questions of a witness for clarity or ~~admissibility~~ is not
19 to be taken by you as an indication the Court has any
20 opinion as to the guilt or innocence of a defendant in
21 ~~the case and you are to draw no such inferences there-~~
22 from.

23 That determination is up to you and to you alone,
24 based on all the facts of this case and the applicable
25 law in these instructions.

1
2 Now you are here to determine the guilt or
3 innocence of the accused from the evidence in the case.
4 You are not called upon to return a verdict as to the
5 guilt or innocence of any other person or persons, ^{is so} if
6 the evidence in the case convinces you beyond a
7 reasonable doubt of the guilt of the accused, you
8 should so find. But if any reasonable doubt remains
9 in your mind after a careful and impartial consideration
10 of all the evidence in the case, it is your duty to
11 find the accused not guilty.

12 The verdict must represent the considered
13 judgment of each juror. In order to return a verdict
14 it is necessary that each juror agree thereto. Your
15 verdict must be unanimous. It is your duty as jurors
16 to consult with one another and to deliberate with a
17 view to reaching an agreement, if you can do so without
18 violence to an individual's judgment.

19 Each of you must decide the case for himself or
20 herself but do so only after an impartial consideration
21 of the evidence in the case with your fellow jurors.

22 In the course of your deliberations do not
23 hesitate to re-examine your own views and change your
24 opinion if convinced it is erroneous. But do not
25 surrender your honest conviction ~~or the weight of effect~~
of

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2 the evidence solely because of opinion of your
3 fellow jurors or for the mere purpose of returning a
4 verdict. Remember at all times you are not partisans.
5 You are judges of the facts. Your sole interest is to
6 seek the truth from the evidence in the case. There
7 is nothing peculiarly different in the way a juror
8 should consider the evidence in a criminal case in
9 that which all reasonable persons treat any question,
10 depending upon evidence presented to them. You're
11 expected to use your good common sense, consider the
12 evidence in the case for only those purposes which it
13 has been admitted and give it a reasonable and fair
14 construction in the light of your own common knowledge,
15 tendencies and inclinations. If you believe the
16 accused proved guilty beyond a reasonable doubt, say so.
17 If not so proved guilty, say so.

18 You must render a verdict with respect to each
19 of the two counts of the indictment that I have
20 described to you. If any reference either by the Court
21 or by counsel to the matter does not coincide with your
22 own recollection, it is your recollection that should
23 control your deliberations.

24 The punishment provided by the law for the
25 offense charged in the indictment is a matter

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2 exclusively within the province of the Court and
3 should never be considered by the jury in any way in
4 arriving at an impartial verdict as to the guilt or
5 innocence of the accused.

6 Upon retiring to the jury room the juror
7 closest to me, Juror Number 1, will act as your
8 foreman unless he declines to do so. If he declines,
9 then you will elect a foreman or forelady from amongst
10 your number. The foreman will preside over your
11 deliberations and will be your spokesman here in Court.

12 If it becomes necessary during your deliberations
13 to communicate with the Court, you may send a note by
14 the deputy marshal, signed by your foreman or by one
15 or more members of the jury. No member of the jury
16 should ever attempt to communicate with the Court by
17 any other means other than a signed writing. The
18 Court will never communicate with any member of the
19 jury on any subject touching the merits of the case
20 otherwise and in writing or orally here in open Court.

21 You will note from the oath that shall be taken
22 by the deputy marshals that they too as well as all
23 other persons are forbidden to communicate in any way
24 or any manner with any member of the jury on any subject
25 touching the merits of the case.

rs/ss
T6

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2 THE COURT: (Continuing.) Now bear this in
3 mind also, and this is very important. That you are
4 never to reveal to any person, not even to the Court,
5 that is me or any other member attached to the Court
6 how the jury stands numerically or otherwise on the
7 question of the guilt or innocence of the accused
8 until after you have reached a unanimous verdict.

9 Do not, and I say this again, do not write me
10 a note saying the jury stands thus and so for guilty
11 or acquittal. Because if you do, the chances are
12 that will cause a mistrial and the case will have to
13 be retried again. The only note that you should write
14 to me on this subject is, if and when you reach a
15 unanimous verdict, you write me a note saying we have
16 reached a verdict. A unanimous verdict. You do not
17 tell me what it is until you have arrived here in
18 open Court and you are questioned about it.

19 If the occasion arises where you reach an impasse
20 and can't reach a verdict, which I hope will not be
21 the case, somewhere after adequate deliberation on the
22 question, you can write me a note asking to communicate
23 that message to me in open Court, asking to see me in
24 open Court. But, don't write me notes indicating how
25 you stand numerically or otherwise during the course

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2 of your deliberations for the reasons I have just
3 indicated.

4 Now if you retire briefly to the jury room I
5 will discuss certain legal questions with counsel and
6 I will recall you if there are any further
7 instructions that are necessary. The alternate will
8 be discharged and you may begin. But not before then.
9 Don't discuss the case.

10 (Jury excused.)

11 THE COURT: Either of you two gentlemen have
12 anything you wish to add?

13 MR. CORCORAN: Your Honor, perhaps I must
14 admit to a hearing problem. I thought your Honor said
15 we were going to adjourn until 2:15.

16 THE COURT: No, I did not. Five past 2:00. I
17 wanted the jury to be here at five past 2:00.

18 MR. CORCORAN: It must be my hearing problem.

19 THE COURT: It must be.

20 MR. JACKSON: For the record, I have a request
21 to charge verbally on the buyer agent theory. As I
22 understand the law that there is enough information
23 or testimony that Mr. Hammonds was in fact the buyer
24 and that Mr. Zeigler was his agent. That is my
25 request to charge.

THE COURT: Your request is denied.

MR. JACKSON: I have no more requests.

MR. CORCORAN: I have no requests.

THE COURT: No other exceptions, Mr. Passalacqua?

MR. PASSALACQUA: No.

THE COURT: Bring the jury back.

(Jury enters jury box.)

THE COURT: Jurors, I'll ask you to step outside the room again, just for one moment. I must discuss something further with counsel. I'm sorry. Don't discuss the case.

(Jury excused.)

THE COURT: Juror Number 12 has just informed the clerk that his sister passed away today. If it goes beyond roughly 5:00 or 6:00 o'clock he will not be able to participate.

MR. JACKSON: All you can do is put in the alternate.

MR. PASSALACQUA: We have no objection.
Alternate Number 1?

THE COURT: The right thing to do is put in Alternate Number 1.

MR. JACKSON: That is the one sitting in front?

MR. PASSALACQUA: Yes, the young fellow.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,

Appellee,

-against-

AFFIDAVIT OF SERVICE

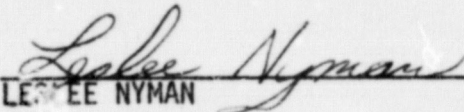
CLIFFORD ZIEGLER,

Defendant-
Appellant.

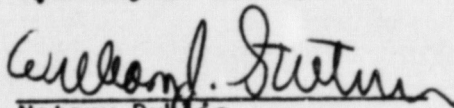
STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

LESLEE NYMAN, being duly sworn, deposes and says:

that she is not a party to this action, is over 18 years of age and resides at New York, N. Y.; that on March 17, 1976, she served the annexed brief and appendix upon Hon. DAVID G. TRAGER, United States Attorney, Eastern District of New York, Attorney for Appellee, at 225 Cadman Plaza East Brooklyn, New York 11201, the address designated by said United States Attorney for that purpose by depositing true copies of same, enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.


LESLEE NYMAN

Sworn to before me this
10th day of March, 1976


Notary Public

WILLIAM J. STUTMAN
NOTARY PUBLIC, State of New York
No. 31-9233920
Qualified in New York County
Commission Expires March 30, 1978